

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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LEE EDWARD SZYMBORSKI,
Plaintiff,
vs.
THE CITY OF NORTH LAS VEGAS, *et al.*,
Defendants.

2:19-cv-00335-JAD-VCF
ORDER

Before the court is the Joint Discovery Plan and Scheduling Order (ECF No 26).

The parties request that discovery is stayed until after the resolution of the pending Motion to Dismiss. *Id.* The court will treat the Joint Discovery Plan and Scheduling Order (ECF No. 26) as a stipulation to stay discovery.

LEGAL STANDARD

When evaluating a request to stay discovery while a dispositive motion is pending, the court initially considers the goal of Federal Rule of Civil Procedure 1. The guiding premise of the Rules is that the Rules “should be construed and administered to secure the just, speedy, and inexpensive determination of every action.” FED. R. CIV. P. 1. It needs no citation of authority to recognize that discovery is expensive. The Supreme Court has long mandated that trial courts should resolve civil matters fairly but without undue cost. *Brown Shoe Co. v. United States*, 370 U.S. 294, 306 (1962). This directive is echoed by Rule 26, which instructs the court to balance the expense of discovery against its likely benefit. See FED.R.CIV.P. 26(B)(2)(iii).

Consistent with the Supreme Court's mandate that trial courts should balance fairness and cost,

1 the Rules do not provide for automatic or blanket stays of discovery when a potentially dispositive motion
2 is pending. *Skellerup Indus. Ltd. v. City of Los Angeles*, 163 F.R.D. 598, 600–01 (C.D. Cal. 1995).
3 Pursuant to Federal Rule of Civil Procedure 26(c)(1), “[t]he court may, for good cause, issue an order to
4 protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”
5 Whether to grant a stay is within the discretion of the court. *Munoz–Santana v. U.S. I.N.S.*, 742 F.2d 561,
6 562 (9th Cir. 1984). The party seeking the protective order, however, has the burden “to ‘show good cause’
7 by demonstrating harm or prejudice that will result from the discovery.” FED. R. CIV. P. 26(c)(1).
8 Satisfying the “good cause” obligation is a challenging task. A party seeking “a stay of discovery carries
9 the heavy burden of making a ‘strong showing’ why discovery should be denied.” *Gray v. First Winthrop*
10 *Corp.*, 133 F.R.D. 39, 40 (N.D.Cal.1990) (*citing Blankenship v. Hearst Corp.* 519 F.2d 418, 429 (9th Cir.
11 1975)).

12 Generally, imposing a stay of discovery pending a motion to dismiss is permissible if there are no
13 factual issues raised by the motion to dismiss, discovery is not required to address the issues raised by the
14 motion to dismiss, and the court is “convinced” that the plaintiff is unable to state a claim for relief. *Rae*
15 *v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *White v. Am. Tobacco Co.*, 125 F.R.D. 508 (D. Nev.
16 1989) (*citing Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) cert. denied, 455 U.S. 942 (1982)).
17 Typical situations in which staying discovery pending a ruling on a dispositive motion are appropriate
18 would be where the dispositive motion raises issues of jurisdiction, venue, or immunity. *TradeBay, LLC*
19 *v. Ebay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011).

20 Courts in the District of Nevada apply a two-part test when evaluating whether a discovery stay
21 should be imposed. *Id.* (citations omitted). First, the pending motion must be potentially dispositive of the
22 entire case or at least the issue on which discovery is sought. *Id.* Second, the court must determine whether
23 the pending motion to dismiss can be decided without additional discovery. *Id.* When applying this test,
24 the court must take a “preliminary peek” at the merits of the pending dispositive motion to assess whether
25 a stay is warranted. *Id.* The purpose of the “preliminary peek” is not to prejudge the outcome of the motion

1 to dismiss. Rather, the court's role is to evaluate the propriety of an order staying or limiting discovery
2 with the goal of accomplishing the objectives of Rule 1.

3 **DISCUSSION**

4 After a "preliminary peek" and in light of the goals of Rule 1 to "secure the just, speedy, and
5 inexpensive" determination of all cases, the Court finds that Defendants' Motion to Dismiss (ECF No. 9)
6 has merit and may resolve all issues in controversy and demonstrates good cause to stay discovery. The
7 parties will not need to incur unnecessary discovery costs during the pendency of the motion to dismiss.

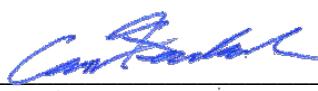
8 *See FED. R. CIV. P. 1.*

9 Accordingly, and for good cause shown,

10 IT IS HEREBY ORDERED that the parties' Stipulation to Stay Discovery (ECF NO. 26) is
11 GRANTED. In the event resolution of Defendants' motion to dismiss (ECF No. 9) does not result in the
12 disposition of this case, the parties must file a new joint discovery plan within 20 days of the issuance of
13 the order deciding that motion.

14 IT IS FURTHER ORDERED that a status hearing is scheduled for 10:00 a.m., September 23,
15 2019, in courtroom 3D, located on the third floor of the Lloyd D. George U.S. Courthouse, 333 Las Vegas
16 Boulevard South, Las Vegas, Nevada 89101.

17 DATED this 5th day of June, 2019.


18 CAM FERENBACH
19 UNITED STATES MAGISTRATE JUDGE
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